

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Nicholas Borgia

27662-018

(Enter above the full name of the plaintiff
or plaintiffs in this action).

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO. 5:11-0778
(Number to be assigned by Court)

Bureau of Prisons
FCI Beckley
Joel Ziegler

(Enter above the full name of the defendant
or defendants in this action)

COMPLAINT

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes _____

No X

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: _____

Defendants: _____

2. Court (if federal court, name the district; if state court, name the county);

-
3. Docket Number: _____

4. Name of judge to whom case was assigned:

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

-
6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: _____

II. Place of Present Confinement:

FCI Beckley

- A. Is there a prisoner grievance procedure in this institution?

Yes

No

- B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes

No

- C. If you answer is YES:

1. What steps did you take? talked & emailed to staff members
2. What was the result? I was stone walled

2. What was the result? I was stone walled

- D. If your answer is NO, explain why not: Start Refuse
to let me file complaint

III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

- A. Name of Plaintiff: Nicholas N. Darbat

Address: Pc Box 350 Beaver WV 25813

- B. Additional Plaintiff(s) and Address(es):** _____

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: FCS Beckley & Bureau of Prisons
is employed as: _____
at 1600 Industrial Road - Beaver WV, 25813

D. Additional defendants: Joel Ziegler Ms Mosley, Mr
Ray. Mr grines

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

I have indigent court appointed counsel
Staff is Refusing me access to my counsel
& Refusing me access to the ability
to contact News media Resources thru
phone and or email. Staff is holding
my mail for extended periods of time
(Ref 6:11-CV-01211-GAP-KRS) I did not
receive the 20 day notice to amend my complaint

IV. Statement of Claim (continued):

until after my action was dismissed. Staff has used policy & punishment to deny me communication with the outside world. Staff has restricted replies by mail from News media outlets citing security reasons. I am unable to contact my court appointed counsel in a timely matter (Ref 10-15970-cc, 10-15971-cc, & 10-15972-cc) thus providing me with ineffective assistance of counsel in the aforementioned cases. I am also receiving differential treatment because of my charges.

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.
Cite no cases or statutes.

I am requesting a Summary judgment court order to allow me to communicate with counsel of Record & established credible News media outlets by phone &/or email so that I may be able to communicate in a time efficient matter & be able to report on the conditions of my confinement to the outside world.

V. Relief (continued)):

VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes _____ No X

If so, state the name(s) and address(es) of each lawyer contacted:

If not, state your reasons: I am unable to have
contact with the outside world

- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes _____ No X

If so, state the lawyer's name and address:

Signed this 11th day of October, 2011.

André A. Bantat

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11th 2011
(Date)

André A. Bantat
Signature of Movant/Plaintiff

Signature of Attorney
(if any)

BP-A0740
JUN 10

REQUEST FOR INMATE TELEPHONE RESTRICTION

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

INSTRUCTION: This form is used by staff to request the Warden's approval to impose a telephone restriction in accordance with the policy on Telephone Regulations for inmates. This form is used when the telephone restriction requested relates to the inmate's PSF - Serious Telephone Abuse, or a pending investigation or disciplinary action for possible telephone abuse. A telephone restriction for one of these purposes must be necessary to protect the safety, security, or good order of the institution, or to protect the public. A telephone restriction imposed **pending** investigation or disciplinary action for possible telephone abuse is limited to 30 days duration and must be renewed at the of the 30 day period, or be automatically discontinued by Trust Fund Branch staff. Inmates dissatisfied with the Warden's decision may appeal through the Administrative Remedy Program.


Inmate's Name	Reg. No.	Institution
Barbati, Nicholas	27662-018	FCI Beckley

Part I - Request for Telephone Restriction (For the following reason(s) insert a brief description)

Inmate Barbati arrived at FCI Beckley on February 15, 2011. According to his PSI, Barbati was convicted of phoning false threats towards the Space Shuttle launch, multiple false calls to law enforcement agencies worldwide, and false calls to the U.S. Coast Guard of false bomb threats and sinking ships that resulted in a large search at night in choppy seas. Inmate Barbati was designated with a Public Safety Factor of Phone Abuse. As such policy requires a review to determine his appropriateness for telephone privileges. Additionally, policy requires that inmate Barbati be provided access to the phone at least once a month.

The above - inmate is recommend for the following telephone restriction; insert description and termination date, if applicable:

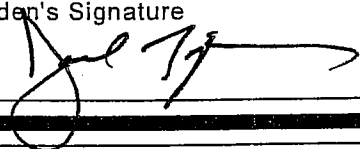
Based on inmate Barbati's propensity to use the phone for illegal conduct and the Bureaus requirement to provide him one phone call a month. I recommend inmate Barbati be approved for 15 minutes a month. Inmate Barbati's conduct will be evaluated by his unit team at his subsequent program reviews to determine if additional time is warranted and proper action taking at that time.

Requesting Staff Member's Name (Printed and Signature)	Title	Date Signed
Michael J. Snow 	Pine Unit Manager	05/18/2011

Part II - Warden's Consideration: the telephone restriction requested is (check one):

- ☒ APPROVED
☐ DENIED

Warden's Signature



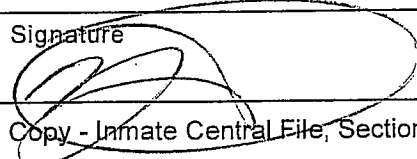
Date Signed

5/19/11

Part III - Distribution: A copy of this form was delivered to the inmate on the date of:

5-18-2011

By: Delivering Staff Member's Printed Name and Signature

M. Snow 

Original - Inmate; Copy - Trust Fund Section; Copy - Inmate Central File, Section 3, unless FOI Exempt

TRULINCS 27662018 - BARBATI, NICHOLAS - Unit: BEC-P-C

FROM: 27662018

TO: Warden

SUBJECT: ***Inmate to Staff Message***

DATE: 4/18/2011 4:54:02 PM

I have seen the executive staff @ mainline !!!!!!! please respond

-----Warden on 04/18/2011 01:47 PM wrote:

>

Please see the Executive Staff at mainline.

>>> -^!"BARBATI, -^!"NICHOLAS" <27662018@inmatemessage.com> 4/15/2011

1:01 PM >>>

To: Pine-BI

Inmate Work Assignment: Pm orderly

Dear Mr. Warden

I am currently blocked from using the phone system due to an alleged public safety factor. I feel that it is an non issue becasue when i came here my phone was turend on. later on Staff turend off my phone priviliges and restricted me from using the phone. I feel that once my phone was turend on that it became a non issue and it is now punishment. I feel this punishment is unjustified and warrantless. I also feel it a violation of my right as an individual and denied the right to due process. I am also being denied access to legal counsel to court appointed indigent counsel for a sentence that i am currently incraceted for. this is a direct violation of my constutational rights. at this time i am requestioning that my phone privilages be fully restored and that i recieve hardship credit of time and a half for being punished with out due process. thank you for you time and understanding in this matter. I have talked to the execetive staff mr fowler, Mr snow the captin and the aw i have now made my way to you as the final step of the informal remedy procedure.

Sincely

Nicholas Barbati

This message is intended for official use and may contain SENSITIVE information. If this message contains SENSITIVE information, it should be properly delivered, labeled, stored, and disposed of according to policy."

TRULINCS 27662018 - BARBATI, NICHOLAS - Unit: BEC-P-C

FROM: 27662018

TO: Warden

SUBJECT: ***Inmate to Staff Message***

DATE: 5/23/2011 2:18:40 PM

update from email on 4/18/11

i have been granted 15 minutes a month phone however inmate is still being denied the ability to effectively communicate with his counsel. inmate is also being denied access to court appointed indigent counsel. inmate requests either full restoration of phone privileges which were taken with out cause. inmate will point out that there is no phone abuse priviliages while within the system so the imposed phone restriction is meritless and is further hardship place upon inmate. inmate will aslo point that that he is 598 miles from home. bop policy is 500 mile limit to inmates knowledge. inmate is also requesting the appointment of hardship time for this imposed hardship. becasue inmate is being denied effective assitance of counsle inmate has the ability to bypass the adim remedy process and file a 1983 directly. inmate main purpose of requesting phone is to aquire proper paper work to recieve his full jail time credit. which should have commenced on march 12 2010.

listen i dont like emailing you and im sure you dont like getting emails from me all im trying to do is get my jail time credit squared away so i can partake in the rdap program. im doing college clases, yoga calistechts im programing im tryng to come out a better person and leave here. so help me resolve this please

TRULINCS 27662018 - BARBATI, NICHOLAS - Unit: BEC-P-C

FROM: 27662018
TO: Warden
SUBJECT: ***Inmate to Staff Message***
DATE: 10/03/2011 05:31:34 PM

To: pINE BL
Inmate Work Assignment: F/S TRAIN

update i have talked to ms mosley
she was unable to assist in ameliorating the situation. at this time i am requesting that my email be fully restored. so that i may remain in contact with my lawyer and news media correspondence.

-----Warden on 9/29/2011 3:10 PM wrote:

>

Please see the Executive Staff at mainline.

>>> ~^!"BARBATI, ~^!NICHOLAS" <27662018@inmatemessage.com> 9/29/2011
2:49 PM >>>

To: pINE BL
Inmate Work Assignment: F/S TRAIN

SUBJECT INCEDENT REPORT# 2197618

i am writing this email in referenced to the above incident and resulting punishment from it. as you are currently aware i have a telephone restriction placed upon me by bop for my instant offense of inraction @ this facility. by fci beckley implementing the dho snactioned punishment of 6 months no email this facility has inadvertently violated several of my rights. i currently have 3 appeals and 2 civil actions in federal court and have indigent court appointed counsel for said matters. with aforementioned on going cases it becomes imperatively important to remain in active contact with indigent court appoint counsel. I am currently experiencing difficulties with receiving and sending mail from this institution with time related matters. (reference case no 6:11-cv-1211-ori-31krs)i did not receive the court letter notifying me of a 20 day time period to refile my complaint till after 40 days after that 20 time period. being as conditions exist. I am requesting restoration of my email to remain in contact with the courts (thru counsel) being as i have talked to my unit team and other staff members of this facility. and following the proper chain of command regarding this issue i am now forwarding this issue to you as is proper in the informal remedy process. If staff is unable to provide a viable alternative to email to contact my lawyer and receive emails legal organizations such as Famm, Freedom america, and so forth i would be more than willing to accept. however at this current time. this facility and its policy are creating deliberate indifference, and is denying me my constitutional access to the courts. I hope that we may rectify this issue as soon as possible. i thank you for taking the time to address this

TRULINCS 27662018 - BARBATI, NICHOLAS - Unit: BEC-P-C

matter and correct it.

Sincerely

Nicholas N. Barbati

This message is intended for official use and may contain SENSITIVE information. If this message contains SENSITIVE information, it should be properly delivered, labeled, stored, and disposed of according to policy.?

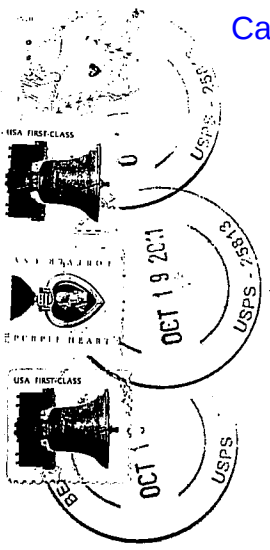
**INSTRUCTIONS FOR FILING A COMPLAINT BY A
PRISONER UNDER CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

NOTICE: The law has changed! The Prisoners Litigation Reform Act requires prisoners to exhaust available administrative remedies before filing a suit with respect to the conditions of confinement or the effects of action by government officials on the lives of persons confined in prison. In addition, the Act requires a prisoner to pay a **\$350.00 filing fee**, although the fee may be paid in installments.

These forms are not to be used for filing a Petition for Writ or Habeas Corpus, or to challenge the validity of a state conviction for a criminal offense.

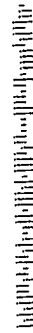
Enclosed are four copies of a Complaint form with one Application to Proceed In Forma Pauperis and Affidavit, an Explanation of Filing Fees and Proceeding In Forma Pauperis, an Authorization to Release Institutional Account Information and To Pay Filing Fee, and three U. S. Marshal Process and Receipt Forms.

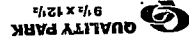
1. Your Complaint can be brought in this Court only if one or more of the named defendants are located within the Southern District of West Virginia (counties south of and including Wood, Wirt, Roane, Clay, Nicholas and Greenbrier), or if your claim arose in this District. Further, you must file a separate complaint for each claim that you have unless they are all related to the same incident or issue.
2. You must file an original complaint plus one copy of the complaint for each defendant you name. Use 8-1/2 X 11 inch paper. For example, if you name two defendants, you must file the original and two copies of the complaint. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original. The original complaint must bear an original signature from each plaintiff. Your complaint must be legibly written or typewritten and you are required to give facts. **THE COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.** The plaintiff or plaintiffs must include his/her inmate registration number. If you need additional space to answer a question, you may use the reverse side of the form or an additional blank page.
3. If you have **\$350.00**, send a check or money order for **\$350.00** per complaint payable to "Clerk, U. S. District Court". If you are unable to pay the **\$350.00** filing fee, complete and sign an Application to Proceed in Forma Pauperis and Affidavit for each plaintiff (see Explanation of Filing Fees and Proceeding In Forma Pauperis).
4. Complete and sign one U. S. Marshal Process and Receipt Form for each defendant named in the complaint.
5. When all these forms are completed, mail them to: Clerk, United States District Court
110 North Heber Street, Room 119
Beckley, WV 25801
6. Documents certified as true under penalty of perjury do not need to be notarized.
See 28 U.S.C. § 1746.



CLERK
United States district court
110 North heber st, Rm 119
Beckley WV, 25801

27662-018
Nicholas Barbati
Beckley 27662-018
P. O. Box 350
Federal Corr Facility
Beaver, WV 25813
United States





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